



4. Second, Defendant claims that RainBrella “Lasts Over 100 Car Washes.” This claim is false and misleading, as it implies that the RainBrella product lasts for as long as it takes an average consumer to obtain 100 car washes. In fact, Defendant cannot substantiate this reasonable interpretation of its claim.

5. Accordingly, ITW brings this false advertising case, as Defendant’s false and misleading advertising claims about RainBrella impact sales of ITW’s RAIN-X products, and have harmed and are likely to continue to harm the reputation of ITW’s RAIN-X products.

### **PARTIES**

6. Plaintiff, Illinois Tool Works Inc., is a Delaware corporation. ITW Global Brands is a division of Illinois Tool Works Inc. ITW Global Brands has its principal place of business at 16200 Park Row Drive, Suite 120, Houston, Texas.

7. On information and belief, Defendant, Rust-Oleum Corporation, is a Delaware corporation with its principal place of business at 11 East Hawthorne Parkway, Vernon Hills, Illinois.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction because this action arises under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 *et seq.* (the “Lanham Act”), and jurisdiction is specifically conferred by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendant because it is making the false advertising claims in Texas and this District and selling the RainBrella product in Texas and this District.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, because:

(a) ITW Global Brands has its principal place of business in this District; (b) this Court has personal jurisdiction over Defendant with respect to this action; and (c) Defendant is making the false advertising claims in this District and selling the RainBrella product in this District.

### **FACTS**

#### **ITW and Its Market-Leading RAIN-X Windshield Glass Water Repellent**

11. Since 1970, ITW and its predecessors in interest have sold RAIN-X windshield and exterior glass water repellent products in the United States. When applied to a vehicle's windshield, RAIN-X improves a driver's visibility in wet driving conditions. It also helps remove frost, ice, salt, mud, and bugs from a vehicle's windshield. ITW sells its RAIN-X windshield and exterior glass water repellent as a spray, squeeze bottle, and as wipes.

12. The ITW Global Brands division of Illinois Tool Works Inc. is headquartered in Houston, Texas. Among other things, this division oversees all testing, formulation, manufacturing, sale, distribution, and advertising of RAIN-X products.

13. ITW sells millions of dollars of RAIN-X windshield and exterior glass water repellent annually in the United States, and spends substantial sums marketing, advertising, and promoting its RAIN-X products.

14. On account of ITW's substantial sales and advertising of its RAIN-X products for over forty years, RAIN-X has become the market-leading brand of vehicle windshield and exterior glass water repellent in the United States.

Defendant's False Claims Regarding Its New  
RainBrella Windshield and Exterior Glass Water Repellent

15. On information and belief, in November 2016, Defendant started to sell its RainBrella windshield treatment product. Defendant's RainBrella product is sold as a wipe and directly competes with ITW's RAIN-X products.

16. Defendant's RainBrella product is sold throughout the United States, including in Houston, Texas.

17. Defendant advertises RainBrella as a competing product to RAIN-X and makes the comparative claim that the product "Lasts 2X Longer Than RAIN-X®" and "Lasts 2X Longer" than "the leading competitor." Defendant intends the phrase "the leading competitor" to refer to RAIN-X.

18. Defendant's "Lasts 2X Longer" claim appears: (a) on the product packaging for RainBrella (see attached Exhibit A); (b) on the website promoting RainBrella at <http://www.wipenew.com/wipe-new-rainbrella> (see attached Exhibit B); (c) in three spots during a commercial for the product available on Defendant's website, as well as on YouTube at <https://www.youtube.com/watch?v=U-qz3uhrjZM> (screen shots of which are in the attached Exhibit C); and (d) on information and belief, in nationally disseminated television advertising.

19. Media reports about RainBrella have repeated Defendant's "Lasts 2X Longer" claim. For example, a review of the product aired on the local news of the CBS station WHNT in the Tennessee Valley area in northern Alabama, and in this review the reporter mentioned Defendant's "Lasts 2X Longer" claim. This review was posted to YouTube on March 29, 2017, by the WHNT reporter who did the review. *See* <https://www.youtube.com/watch?v=8isgWIH0IpA>.

20. Defendant's "Lasts 2X Longer" claim is literally false. ITW conducted wiper blade abrasion tests comparing its RAIN-X windshield and exterior glass water repellent to Defendant's RainBrella windshield water repellent. ITW's wiper blade abrasion tests revealed that RAIN-X outlasted RainBrella, not the other way around.

21. Defendant also makes the unqualified claim that RainBrella "Lasts Over 100 Car Washes" on the front of the product packaging (see Exhibit A), as well as on its aforementioned website and commercial (Exhibits B and C). This claim is false and misleading, in that: (a) Defendant's RainBrella product does not last for as long as it takes for the average consumer to wash his/her car 100 times, and (b) any substantiation from Defendant would not replicate actual consumer experience or normal driving conditions.

Harm to ITW

22. As a result of Defendant's aforementioned acts of false and misleading advertising, the parties' customers and potential customers are likely to be deceived as to the nature and performance of Defendant's RainBrella product, as well as the nature and performance of ITW's RAIN-X products. Defendant's false and misleading advertising has caused and will continue to cause irreparable harm to ITW and to the goodwill and reputation it owns in its RAIN-X products, and has caused and will continue to cause ITW to lose sales of its RAIN-X windshield and exterior glass water repellent products.

**COUNT I**

**FALSE ADVERTISING IN  
VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a)**

23. ITW repeats and realleges the allegations contained in Paragraphs 1 through 22 as if fully set forth herein.

24. Defendant has made and continues to make literally false comparative advertising claims that its RainBrella product “Lasts 2X Longer Than RAIN-X®” or “Lasts 2X Longer” than “the leading competitor,” which is a reference to ITW’s RAIN-X product.

25. Defendant’s claim has actually deceived, has a tendency to deceive, and/or is likely to deceive consumers.

26. The resulting deception caused by the Defendant’s claim is material, in that the Defendant’s claim is likely to influence the purchasing decision of purchasers of windshield water repellents.

27. Defendant has disseminated its false and misleading advertising claim throughout the United States, including in Houston, Texas, and has therefore made this claim in interstate commerce.

28. Such commercial advertising by Defendant constitutes false statements of fact that misrepresent the nature, qualities, and characteristics of its RainBrella product in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

29. As a direct and proximate result of these actions, ITW has suffered and is likely to continue to suffer significant monetary damages and discernible competitive injury by the direct diversion of sales from ITW and a loss of goodwill associated with ITW’s RAIN-X product.

30. Defendant’s false advertising is knowing and willful.

31. ITW has suffered and is likely to continue to suffer irreparable injury, and thus is entitled to injunctive relief. ITW is also entitled to the recovery of all available damages, attorneys' fees, costs, and Defendant's profits.

32. This is an exceptional case within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117.

## **COUNT II**

### **FALSE ADVERTISING IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a)**

33. ITW repeats and re-alleges the allegations contained in Paragraphs 1 through 20 as if fully set forth herein.

34. Defendant's claim that RainBrella "Lasts Over 100 Car Washes" is misleading, as a reasonable interpretation of this claim is that RainBrella lasts as long as it takes an average consumer to wash his/her car 100 times. Defendant cannot substantiate this reasonable interpretation, and any substantiation Defendant may have would not replicate actual consumer experience or normal driving conditions.

35. Defendant's claim has actually deceived, has a tendency to deceive, and/or is likely to deceive consumers.

36. The resulting deception caused by the Defendant's claim is material, in that the Defendant's claim is likely to influence the purchasing decision of purchasers of windshield water repellents.

37. Defendant has disseminated its false and misleading advertising claim throughout the United States, including in Houston, Texas, and has therefore made this claim in interstate commerce.

38. Such commercial advertising by Defendant constitutes false and/or misleading statements of fact that misrepresent the nature, qualities, and characteristics of its RainBrella product in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. As a direct and proximate result of these actions, ITW has suffered and is likely to continue to suffer significant monetary damages and discernible competitive injury by the direct diversion of sales from ITW and a loss of goodwill associated with ITW's RAIN-X products.

40. Defendant's false advertising is knowing and willful.

41. ITW has suffered and is likely to continue to suffer irreparable injury, and thus is entitled to injunctive relief. ITW is also entitled to the recovery of all available damages, attorneys' fees, costs, and Defendant's profits.

42. This is an exceptional case within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117.

### **PRAYER FOR RELIEF**

WHEREFORE, ITW prays for relief against Defendant and respectfully requests an entry of judgment as follows:

1. For a Preliminary and Permanent Injunction Order that:
  - a. Enjoins Defendant, its officers, agents, servants, distributors, sales associates, and employees, and all persons in active concert and participation with them, including their affiliates, from further disseminating the false and misleading advertising claims set forth in this Complaint in any form or medium;



- b. Requires Defendant to recall, withdraw, and/or retrieve all offending advertising materials from the marketplace, including product packaging; and
- c. Requires Defendant to destroy all existing copies in its control of any advertising, marketing, or promotional materials that include the false and misleading advertising claims set forth in this Complaint.

2. For an order requiring Defendant to reimburse ITW for any and all corrective advertising measures ITW may undertake to dispel the false and misleading advertising claims set forth in this Complaint;

3. For an order directing Defendant to account for, and to pay over to ITW, all gains, profits, and advantages derived by Defendant from the above-described wrongful acts;

4. For monetary damages sustained by ITW as a result of Defendant's unlawful conduct, in an amount to be proven at trial;

5. For an order multiplying or enhancing any award under Paragraphs 3 and 4 of this Prayer for Relief because of Defendant's willful and deliberate activities described herein;

6. Directing that Defendant pay ITW the costs of this action and its reasonable attorneys' fees pursuant to 17 U.S.C. § 1117(a); and

7. Granting ITW such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, ITW hereby demands a trial by jury.

Dated: September 18, 2017

Respectfully submitted,

/Kristine Bergman/

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GERALDSON LLP**

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*Attorneys for Plaintiff Illinois Tool Works Inc., on behalf  
of its ITW Global Brands division*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2017, I electronically filed the foregoing document with the Clerk of Court for the United States District Court for the Southern District of Texas by using the CM/ECF system and that service will accomplished through that system.

/Kristine Bergman/

## **EXHIBIT A**





# RainBrella



**WIPE ON, WIPE OFF  
IT'S THAT EASY!**

**Repels Rain, Mud & Dirt Instantly!**

• TRUSTED QUALITY SINCE 1921 •

**RUST-OLEUM®  
WIPE  
NEW®**

**GREATLY IMPROVES  
VISIBILITY**

**2X LASTS LONGER\***

**RainBrella**

**Glass Treatment**

**Lasts Over 100  
Car Washes**

**Kit Includes:**

- 2 Wipe-Its™ Infused with RainBrella™
- 1 Microfiber Buffing Cloth
- 1 Pair Nitrile Gloves

**Before**

**After**

**1.5 FL. OZ. (44 mL)**

**DANGER!** Corrosive. Causes eye and skin burns. Flammable liquid and vapor. Harmful or fatal if swallowed. Harmful if inhaled. See cautions on bottom panel.



**RUST-OLEUM**  
**WIPE**  
**NEW**



# RainBrella<sup>TM</sup>

RainBrella<sup>TM</sup> by Wipe New is an umbrella for your windshield. This long lasting treatment dramatically repels nature's worst elements – water, mud, dirt & more – from exterior glass surfaces. The crystal clear, haze-free formula will increase visibility and safety when driving in the poorest weather conditions – while lasting over two times longer than the leading competitor. Its innovative, wipe on technology makes for a quick and easy application.



**STEP 1: WIPE ON.**  
**LET SIT FOR 5**  
**MINUTES.**



**STEP 2: WIPE OFF.**  
**STEP 3: REPEAT**  
**STEPS 1 & 2.**

**SEE WHAT**  
**YOU'VE BEEN**  
**MISSING!**

**Untreated**

**Treated**

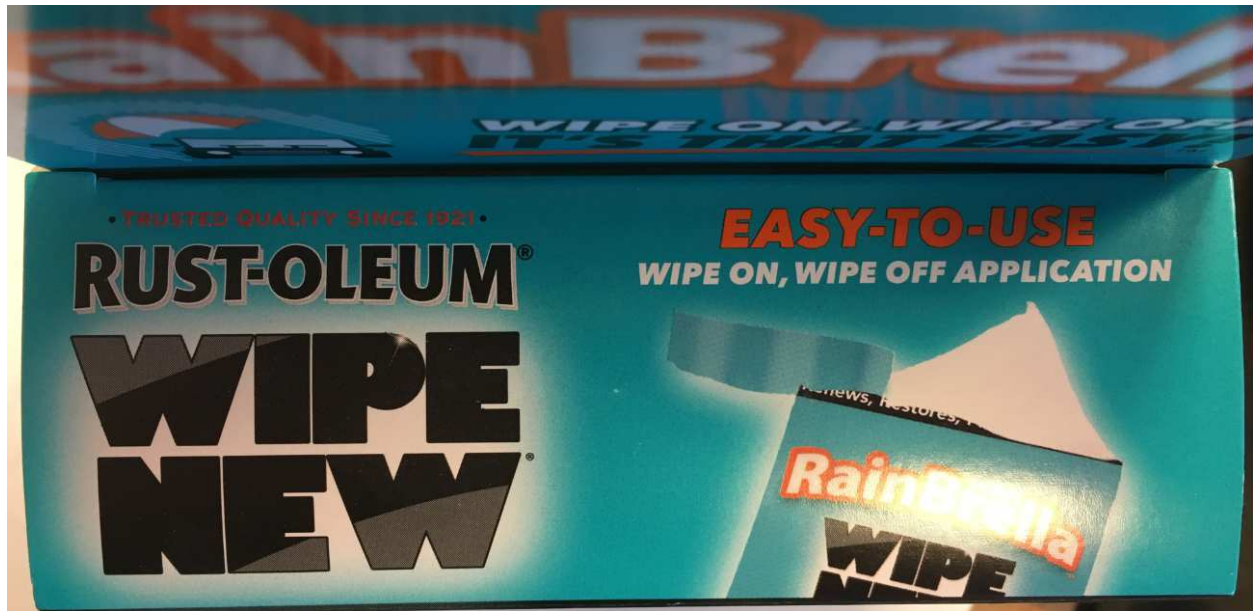
\*RainBrella and its repellent properties last, on average, at least two times longer versus the leading competitor in a wiper blade abrasion test.

NOTE: Not recommended for plastic surfaces, glass only



SIDES







## **EXHIBIT B**

Wipe New is Available in Bulk. Visit WipeNewPro.com



**Innovative, Award Winning Products**

CART / \$0.00



HOME PRODUCTS ▾ OUR FANS BLOG PRESS HOW TO ABOUT US INVENTORS

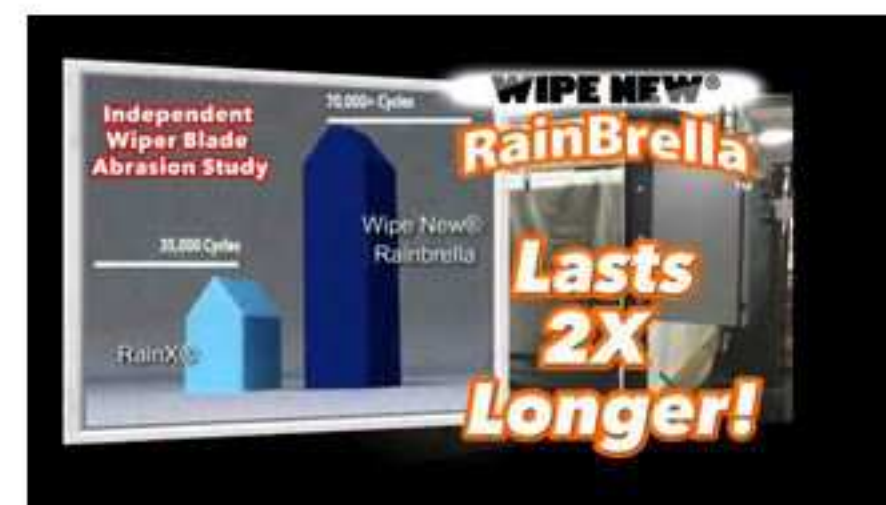


• TRUSTED QUALITY SINCE 1921 •  
**RUST-OLEUM®**  
**WIPE NEW**  
**RainBrella**  
**Glass Treatment**

ORDER NOW

Product Description

Instructions



• TRUSTED QUALITY SINCE 1921 •  
**RUST-OLEUM®**  
**WIPE NEW**

**RainBrella**

**Repels Rain, Mud & Dirt Instantly!**





# Glass Treatment

Lasts Over 100  
Car Washes

**GREATLY IMPROVES  
VISIBILITY**



• TRUSTED QUALITY SINCE 1921 •  
**RUST-OLEUM®**  
**WIPE**  
**NEW**



# RainBrella™

**WIPE ON, WIPE OFF**  
**IT'S THAT EASY!**

TM

RainBrella™ by Wipe New is an umbrella for your windshield. This long lasting treatment dramatically repels nature's worst elements – water, mud, dirt & more – from exterior glass surfaces. The crystal clear, haze-free formula will increase visibility and safety when driving in the poorest weather conditions – while lasting over two times longer than the leading competitor. Its innovative, wipe on technology makes for a quick and easy application.





**STEP 1: WIPE ON.**  
**LET SIT FOR 5**  
**MINUTES.**



**STEP 2: WIPE OFF.**  
**STEP 3: REPEAT**  
**STEPS 1 & 2.**

**SEE WHAT**  
**YOU'VE BEEN**  
**MISSING!**



\*RainBrella and its repellent properties last, on average, at least two times longer versus the leading competitor in a wiper blade abrasion test.

NOTE: Not recommended for plastic surfaces, glass only.

**WIPE ON, WIPE OFF. IT'S THAT EASY!™**



RainBrella™ by Wipe New® is an umbrella for your windshield. This long lasting treatment repels nature's worst elements, water, mud, dirt and more, from exterior glass surfaces. The crystal clear, haze-free formula will increase visibility and safety when driving in the poorest weather conditions. The innovative, wipe on technology makes for a quick and easy application. Wipe New RainBrella is great for use on additional automotive glass surfaces such as side mirrors, side windows and rear windows.



RainBrella drastically improves driving visibility during poor weather conditions – repels:

- rain
- mud
- dirt
- and more!

#### Features:

- Repels rain, mud and dirt
- Improves visibility while driving in poor weather conditions
- Crystal clear, haze-free formula
- Easy-to-use, wipe on application
- Protects through 100 car washes
- Last 2x longer than Rain X

**ORDER NOW**

### WIPE NEW RAINBRELLA® - INSTRUCTIONS

#### IMPORTANT NOTES

#### APPLICATION INSTRUCTIONS

- One Wipe-It™ contains enough RainBrella™ to treat the front windshield with two coats. It is recommended to apply two coats of RainBrella for best results.
- Wipe New® RainBrella™ is designed specifically for exterior glass. It is not recommended for use on plastic or polycarbonate substrates.
- IMPORTANT: If a slight haze or shine still remains after removing the second coat, use a damp, clean cloth or paper towel to aid in the removal of any remnants.
- When applying RainBrella™, wear the included protective gloves and use in a well-ventilated area.
- Wipe New® RainBrella™ is great for use on additional automotive glass surfaces such as: side mirrors, side windows and rear windows.

[View PDF Version of instructions.](#)

[TERMS OF USE AGREEMENT](#) [PRIVACY POLICY](#) [SALES TAX POLICY](#)

Copyright 2017 © **Wipe New LLC**

Please add applicable sales tax to your order - [See our Sales Tax Policy for details](#)  
Shipping time is 4-10 business days. Allow 48 business hours before inquiring about the status of your order.

### UNITED STATES

ORDER RELATED QUESTIONS (i.e. billing, where's my order? wrong product received, etc):

Phone: [\(855\) 836-8438](#) weekdays, 8:00 am to 8:00 pm, EST  
Email: [wipenew@customerstatus.com](mailto:wipenew@customerstatus.com)  
Online: [CustomerStatus.com](http://CustomerStatus.com) anytime day or night

PRODUCT RELATED QUESTIONS (i.e. how to use/remove, recommended uses, etc):

Phone: [\(888\) 822-3570](#) weekdays, 7:00 am to 6:00 pm, CST  
Email: [Rust-Oleum Wipe New - US Product Support](#)  
Tutorial Videos: [How To Wipe New](#)  
Additional Information: [WipeNew.com](http://WipeNew.com)

### Canada

ORDER RELATED QUESTIONS (i.e. billing, where's my order? wrong product received, etc):

Phone: [\(877\) 501-1088](#)  
Email: [customerservice@nlship.com](mailto:customerservice@nlship.com)

PRODUCT RELATED QUESTIONS (i.e. how to use/remove, recommended uses, etc):

Phone: [\(800\) 387-3625](#)  
Email: [Rust-Oleum Wipe New - Canada Product Support](#)  
Additional Information: [Rust-Oleum Wipe New Canada](#)



## **EXHIBIT C**



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Wipe New® Rainbrella™



Wipe New Corporate Page

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Published on Dec 30, 2016

Buy Rainbrella Online - [www.Rainbrella.com](http://www.Rainbrella.com)

RainBrella™ by Wipe New® glass treatment is like an umbrella for your Windshield. Repels Rain, Mud, Dirt & lasts 2X longer than similar

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**Wipe New Review - Warning Before You Buy!**

TrustMyMechanic.com  
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**DEAL OR DUD: Rain Brella**

Christine Mitchell  
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**Product Review: Wipe New Rainbrella**

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**How To: Apply Wipe New Fleets to Gel Coat**

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Wipe New® Rainbrella™



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Buy Rainbrella Online - [www.Rainbrella.com](http://www.Rainbrella.com)

Rainbrella™ by Wipe New® glass treatment is like an umbrella for your Windshield. Repels Rain, Mud, Dirt & lasts 2X longer than similar

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**Does Wipe New Headlight Restore Work?**  
Todd Saville  
30,132 views



<https://www.youtube.com/watch?v=U-qz3uhrjZM>

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**WIPE NEW®**  
**RainBrella™**Untreated  
Side**Lasts 2X  
Longer!**Actual cell phone video  
recorded by Rainbrella user.

▶ ⏮ 🔊 1:31 / 2:01



Wipe New® Rainbrella™



Wipe New Corporate Page

616

142,225 views

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Published on Dec 30, 2016

Buy Rainbrella Online - [www.Rainbrella.com](http://www.Rainbrella.com)

RainBrella™ by Wipe New® glass treatment is like an umbrella for your Windshield. Repels Rain, Mud, Dirt &amp; lasts 2X longer than similar

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